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in the
Supreme Court
of the
United States

OCTOBER TERM, 1973

NO. _____

FLORIDA POWER & LIGHT COMPANY,
Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS,
LOCAL 641, 622, 759, 820 AND 1263,
Respondents,

and

NATIONAL LABOR RELATIONS BOARD,
Respondent.

REPLY TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Respondents, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, Local Unions 641, 622,
759, 820 and 1263, reply to the Petitioner's Petition For a

Writ of Certiorari to review the Decision of the United States Court of Appeals for the District of Columbia Circuit entered on June 29, 1973.¹

QUESTION PRESENTED

Whether the Respondent Unions violated Section 8(b)(1)(B) of the National Labor Relations Act, 29 U.S.C. 158(b)(1)(B), by levying fines and imposing other sanctions against Company supervisors who are members of the Union for crossing Union picket lines and perform rank-and-file bargaining unit work during an economic strike.

STATEMENT

A. Respondents' Exception To Petitioner's Statement of Question Presented.

Respondents have excepted to the statement of the question presented for review by this Court. As presented, it does not clearly state the type of work which was performed by supervisors who were members of the Union and crossed the Union's picket lines during an economic strike. The work performed by these supervisors who are members of the Union was bargaining unit work which is normally performed by the rank-and-file members and employees of the Petitioner. The question as presented by the Petitioner only identifies the work as "Company Work" failing to specify the type of work performed by supervisor-members behind the picket line for which fines and other sanctions were imposed by the Respondents. (P-2)

¹The Decision as of the date of printing has not yet been officially reported.

Respondents have therefore restated the question presented. Respondents maintain that the question presented by it more clearly and accurately focuses attention by the issues presented in this case.

B. The Board's Decision and Order.

The Board did conclude, on stipulated facts and issues, that Respondent-Unions had restrained and coerced the Petitioner in the selection of its representatives for collective bargaining and adjustment of grievances in violation of Section 8(b)(1)(B) of the Act, by the impositions of fines and other sanctions on supervisors who are members of the Union and crossed picket lines and performed bargaining unit work during an economic strike. Member Fanning, dissenting, found no violation and would dismiss the Complaint.

Member Fanning, dissented and cited his dissenting opinion in *IBEW, Local 134 (Illinois Bell Telephone Co.)*, 192 NLRB No. 17. Member Fanning grounded his dissent upon the legislative history of Section 8(b)(1)(B) of the Act and the type of work performed by the supervisor-members during a lawful economic strike. Member Fanning reasoned that the fines imposed upon supervisor-members were not imposed for their activities related to collective-bargaining or grievance-adjustment functions, "but were imposed because of their violation of an unrelated union rule proscribing members of the union from performing struck work during a strike, . . .". The dissenting member recognized the distinction between a supervisor's function representing his employer for the purpose

²"P" refers to the Petition For a Writ of Certiorari by the Petitioner, Florida Power & Light Company.

of collective bargaining or grievance adjustment as opposed to a supervisor performing bargaining unit work.

C. The Decision of the Court of Appeals

The Petitioner, without stating it, has implied that the decision below was by a divided Court and that substantial disagreement existed between three judges joining in the opinion of the Court and two judges concurring in a separate opinion. (See fn. 4 at P-6) No such disagreement existed in the decision below.

The Court found, contrary to the decision of the Board, that Section 8(b)(1)(B) of the Act is not violated when a union disciplines members who happen to be supervisors when these supervisors cross picket lines and perform rank-and-file struck work. The Court emphasized the Board's interpretation of this statute was inconsistent with the statutory language, prior Board precedent, Supreme Court precedent, legislative history and basic principles of fairness.

The concurring opinion was joined in by two (2) members of the Court. The concurring opinion emphasized legislative history and congressional intent behind Section 8(b)(1)(B) of the Act.

Both the opinion of the Court and concurring opinion recognize the right that fines and other sanctions can be imposed upon members of a union who are supervisors and who perform bargaining unit work which threatens the very purpose and effect of an economic strike. Concluding, Respondents submit that the thesis and decision of the majority of the Court below is correct and should be affirmed should the Petitioner's Petition be granted.

RESPONDENTS' POSITION ON THE WRIT.

The Respondents agree with the Petitioner that there presently exists among the Circuits conflict as to the proper scope and interpretation of Section 8(b)(1)(B) of the Act. The Petitioner has well documented the existing conflict among the Circuits and the importance of the need for uniformity in interpreting an important section of the Act. Respondents feel strongly that the decision of the Court below and the Decision of the Court of Appeals for the Ninth Circuit in *National Labor Relations Board v. San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO*, Nos. 71-2949 and 71-2987, decided May 18, 1973, have correctly interpreted the proper scope and application of Section 8(b)(1)(B) of the Act.

The Respondents, in light of the substantial conflict existing among the Circuits, can cite no reason why the Petitioner's Writ should not be granted. Respondents concede that the scope and proper application of Section 8(b)(1)(B) is a very important area of labor law over which the Circuits have disagreed.

Petitioner, at page 10 of the Petition, cites a number of Board decisions which are alleged to support the Decision of the Board below, denied enforcement by the Court. The Petitioner maintains that these Decisions support the Board's position that any imposition of sanctions against a union member-supervisor during a strike violates Section 8(b)(1)(B) of the Act.

The Decisions cited by the Petitioner share a common thread not present in the instant case.³ Each decision cited by the Petitioner concerns a union's imposition of sanctions against a supervisor who is a member when that supervisor either interpreted and applied an existing collective bargaining agreement consistent with the desires of his employer or adjusted a grievance consistent with the desires of his employer. No case cited by the Petitioner supports the Decision of the Board below, denied enforcement by the Court, that a union violates Section 8(b)(1)(B) of the Act when its fines and/or imposes sanctions against a union member-supervisor when he performs rank-and-file bargaining unit work during an economic strike.

Respectively submitted,

Seymour A. Gopman
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³See the Decisions cited by Petitioner at P-10.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) copies of the above and foregoing REPLY TO PETITION FOR A WRIT OF CERTIORARI were served by Airmail, First Class, Postage Prepaid, to the following parties this 19th day of November, 1973.

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